

**IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JOHN DEERE CONSTRUCTION &
FORESTRY COMPANY, INC., a
Delaware corporation, and DEERE &
COMPANY, a Delaware corporation,**

Plaintiffs,

V.

**DREW HOOVER, an individual, and
KIMBERLY HOOVER, an individual,**

Defendants.

CASE NO. 2:07-CV-150

**AMENDED COMPLAINT
(FED. R. CIV. P. 15(a))**

COME NOW the Plaintiffs, **John Deere Construction & Forestry Company, Inc.**, and Deere & Company (hereinafter referred to collectively as “Deere”), **before responsive pleadings have been filed by the Defendants**, and file this **AMENDED** Complaint showing the Court the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction of the instant proceeding and the parties pursuant to 28 U.S.C. §1332.

2. The amount in controversy exceeds \$75,000.00.

3. There is the requisite diversity between the parties.

4. Venue is proper in that **one or both Defendants reside in Covington County, Alabama and**, pursuant to 28 U.S.C. § 1331(a) (2), a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action

is situated in Covington County, Alabama. The events that are referenced or identified include signing of the respective contracts and storage of the referenced equipment.

PARTIES

5. **John Deere Construction & Forestry Company, Inc.**, is a Delaware corporation with principal offices in **Moline, Illinois**.

6. Deere & Company is a Delaware corporation, with principal offices in Moline, Illinois.

7. Drew Hoover is over the age of 19 years and **a resident/citizen of Alabama. His present address is 19833 Chance Road, Florala, AL 36442.**

8. Kimberly Hoover is over the age of 19 years and it is currently unknown if Mrs. Hoover is a resident/citizen of Alabama or Florida.

STATEMENT OF THE FACTS

9. Broken Arrow Farm, LLC ("Broken Arrow"), is an Alabama limited liability company, does business in Florala, Covington County, Alabama, and is not a party to this action.

10. Broken Arrow filed a petition for an order of relief under Chapter 11, Title 11, of the United States Bankruptcy Code, November 15, 2006. As a result of the filing of the aforesaid Chapter 11 bankruptcy petition, all proceedings were stayed by virtue of the provisions of the 11 U.S.C. Section 362(a).

11. There is no stay under Title 11 that applies to codebtors in Chapter 11 cases.

12. The note and security agreement which is the subject of default by the Defendants was signed in Covington County, Alabama, and the collateral that secures the debt is located in Covington County, Alabama.

13. Broken Arrow and one or both Defendants are makers and co-makers for the following loan contracts/security agreements:

Ex	Loan Number	Origination Date	Original Principal Amount	Payoff Amount (December 13, 2006)
A	01043764674AB	10/29/03	\$31,276.87	\$27,693.56
B	01043764674AD	01/03/05	\$84,235.60	\$72,994.30

14. As of November 1, 2002, the combined total payoff balance of the instant loan contract-security agreements is \$100,687.86.

15. Deere has not received a payment on either of the notes since June 2006.

16. Broken Arrow and the Defendants have defaulted in the payment of their obligations to Deere.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT, LOAN 01043764674-AB)**

17. Deere moves to adopt and incorporate by reference paragraphs 1 - 16.

18. Defendant Drew Hoover is in arrears and has breached the loan contract-security agreement by failing to make payments according to the terms of the agreement.

19. The deficiency owed under this loan contract-security agreement, as of December 13, 2006, is \$27,693.56.

WHEREFORE, Deere claims of Defendant, Drew Hoover, the amount of \$27,693.56, together with interest, costs, attorney fees, and for such other and further relief as this Court deems just and appropriate.

**SECOND CAUSE OF ACTION
(BREACH OF CONTRACT, LOAN 01043764674-AD)**

20. Deere moves to adopt and incorporate by reference paragraphs 1 - 16.

21. Defendants Drew Hoover and Kimberly Hoover are in arrears and have breached the loan contract-security agreement by failing to make payments according to the terms of the agreement.

22. The deficiency owed under this loan contract-security agreement, as of December 13, 2006, is \$72,994.30.

WHEREFORE, Deere claims of Defendants, Drew Hoover and Kimberly Hoover, the amount of \$72,994.30, together with interest, costs, attorney fees, and for such other and further relief as this Court deems just and appropriate.

Respectfully submitted on March 9, 2007.

Memory & Day

By: /S/ James L. Day
James L. Day
ASB-1256-A55J

Von G. Memory
ASB-8137-071V

Attorneys for John Deere Credit, Inc.
and Deere & Company

OF COUNSEL:

Memory & Day
Post Office Box 4054
Montgomery, AL 36103-4054
Tel (334) 834-8000
Fax (334) 834-8001

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document on the following, by:

☒ placing same in the United States Mail, postage prepaid, and properly addressed

☒ E-mail or ECF (Pursuant to Fed. R. Bankr. P. 9036)

☐ facsimile

☐ hand delivery

☐ delivered in open court

on March 9, 2007.

Drew Hoover
19833 Chance Road
Floralda, AL 36442

Kimberly Hoover
211 Geohagen Circle
Laurel Hill, FL 32567

/S/ James L. Day
James L. Day